**LABEL COMPONENTS SDN BHD** A

**v.**

**MWE PROPERTIES SDN BHD**

COURT OF APPEAL, PUTRAJAYA B
LOW HOP BING JCA
KN SEGARA JCA
AHMAD MAAROP JCA
[CIVIL APPEAL NO: W-02-869-2001]
18 SEPTEMBER 2009 C

***CONTRACT:*** *Sale and purchase of property - Breach - General damages - Construction by a third party of a new building adjacent to property - Whether vendor-cum-developer caused or consented to said construction - Liability of vendor-cum-developer, whether proven on a balance of probabilities* D

***LAND LAW:*** *Sale and purchase of property - Breach of contract - General damages - Construction by a third party of a new building adjacent to property - Whether vendor-cum-developer caused or consented to said construction - Liability of vendor-cum-developer, whether proven on a balance of probabilities* E

This was an appeal by the appellant/plaintiff, the beneficial owner of a three-storey corner lot building ('the property'), against the High Court's decision dismissing its claim for general damages against the respondent/defendant, the vendor-cum-developer of the property. The question requiring determination in this appeal was whether the defendant had caused or consented to the construction (by a third party) of a new building adjacent to the property, so as to render the defendant liable. F G

**Held (dismissing the appeal with costs)**
**Per Low Hop Bing JCA delivering the judgment of the court:**

**(1)** The question posed was resolved by reference to the learned trial judge's analysis of the oral and documentary evidence tendered before him. Purely on the facts of the instant case, this court was of the view that the learned trial judge had correctly held that, on a balance of probabilities, the plaintiff had failed to prove the defendant had caused or consented to the construction of the new building adjacent to the property. There were, thus, no merits in this appeal. (paras 15-18) H I

A ***Bahasa Malaysia*** *Translation Of Headnotes*

Ini adalah rayuan perayu/plaintif, pemilik benefisial sebuah lot bangunan tepi bertingkat tiga ('hartanah'), terhadap keputusan Mahkamah Tinggi menolak tuntutannya untuk gantirugi am
B terhadap responden/defendan, penjual merangkap pembangun hartanah. Soalan yang perlu ditentukan dalam rayuan semasa adalah sama ada defendan telah mengakibatkan atau bersetuju dengan pembinaan (oleh pihak ketiga) sebuah bangunan baru bersebelahan dengan hartanah, yang menyebabkan defendan bertanggungjawab.

C **Diputuskan (menolak rayuan dengan kos)**
**Oleh Low Hop Bing HMR menyampaikan penghakiman mahkamah:**

**(1)** Soalan yang ditanya diselesaikan dengan merujuk kepada analisis
D yang arif hakim terhadap keterangan lisan dan dokumentari yang dikemukakan di depannya. Hanya berasaskan fakta-fakta kes semasa, mahkamah ini berpendapat bahawa yang arif hakim telah memutuskan dengan betul bahawa, atas imbangan kebarangkalian, plaintif telah gagal membuktikan defendan telah
E mengakibatkan atau bersetuju dengan pembinaan bangunan baru bersebelahan dengan hartanah. Oleh yang demikian, tiada merit dalam rayuan semasa.

*For the appellant - Mathews George; M/s Mathews George & Co*
F *For the respondent - Nazeera Hanifa; M/s Ghazi & Lim*

*[Appeal from High Court, Kuala Lumpur; Civil Suit No: S2-22-427-1994]*

*Reported by Suresh Nathan*

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## JUDGMENT

**Low Hop Bing JCA:**

H **Appeal**

**[1]** On 19 July 2001, after a full trial, the Kuala Lumpur High Court dismissed with costs the appellant's ("the plaintiff's") claim for general damages.

I **[2]** We had on 22 June 2009 dismissed the plaintiff's appeal, exclusively on the facts.

## Agreed Facts

**[3]** *Vide* a series of sale and purchase agreements and deeds of assignment, the plaintiff became the beneficial owner (pending issuance of title) of a three-story corner lot building ("the property").

**[4]** The plaintiff is the present owner. Prior thereto, the original purchasers (in sequence) of the property were Pygasus Holdings Sdn Bhd, Aturan Kekal Sdn Bhd, Aturan Wira Sdn Bhd and Century Era Sdn Bhd (collectively, "the original purchasers").

**[5]** The respondent ("the defendant") was the vendor-cum-developer of the property.

**[6]** Pursuant to the deeds of assignment, the original purchasers, with the defendant's consent, assigned absolutely to the plaintiff all their right, title, benefit and interest in the property under the respective identical sale and purchase agreements made between the defendant and the original purchasers ("the sale and purchase agreements").

**[7]** As a result of the construction, by a third party ("Shencourt"), of a new building and lift (collectively "the new building") adjacent to the property, the building plan in each sale and purchase agreement was varied, whereby the side windows of the property and the atrium or void deck (which is a common property situated above the second floor of the property) had to be sealed off.

**[8]** Before the construction, there was a vacant space between the property and the new building. After the construction, the new building now occupies the vacant space.

**[9]** Other finding of facts by the learned trial judge will appear later in this judgment.

## Liability

**[10]** Learned counsel, Mr Mathews George, submitted for the plaintiff that pursuant to the sale and purchase agreement, the defendant had contracted, either expressly or impliedly, with the original purchasers, to do *inter alia* the following:

A (1) to build and sell the property in accordance with the original building plan, and to obtain the consent in writing of the original and subsequent owners; and

(2) guaranteed the usage and benefit of the common properties.

B **[11]** He added that after the construction of the new building adjacent to the property by Shencourt, the defendant has committed breaches of the sale and purchase agreement.

**[12]** Defendant's learned counsel, Ms Nazeera bt Hanifa, contended C that the plaintiff had failed to prove that the defendant had caused or consented to the construction of the new building adjacent to the property.

**[13]** The learned trial judge found that on the basis of the oral D and documentary evidence adduced at the trial, the plaintiff has failed to prove its claim against the defendant.

**[14]** In the light of the aforesaid submissions and taking into consideration the finding of the learned trial judge, the question that E we have to address revolves around issues of facts. The question may be identified as follows:

> Has the defendant caused or consented to the construction of the new building adjacent to the property, so as to render the defendant liable?

F **[15]** We resolved this question by reference to the learned trial judge's analysis of the oral and documentary evidence tendered before him.

**[16]** Our revisit to the trial evidence reveals that:

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(1) *Vide* Shencourt's letter dated 22 December 1992 to Century Era Sdn Bhd ("CESB"), Shencourt has already obtained the approval in principle from the relevant authorities for the construction in question;

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(2) CESB has consented to the construction;

(3) CESB was informed that Shencourt will be sealing off their windows in conjunction with the construction works;

I (4) CESB had agreed to pay RM20,000 being their contribution towards the constructions works;

(5) The plan for additional construction works was officially approved by City Hall, Dewan Bandaraya Kuala Lumpur ("DBKL") on 22 February 1995; A

(6) It was admitted by the plaintiff that the additional works had taken place after the plaintiff had taken vacant possession of the property; B

(7) Defendant's Assistant General Manager (DW1) testified that:

(a) upon DBKL being satisfied that the building had been constructed in accordance with the approved plan, a temporary certificate for occupation was issued on 10 May 1993; and C

(b) The defendant had not allowed or given permission to Shencourt to carry out the additional works to the building. D

(8) When the defendant came to know of the new building affecting the property, the defendant through its solicitors issued a letter of protest to Shencourt and all the original purchasers; E

(9) Shencourt's managing director (DW2) admitted that:

(a) he had not obtained the defendant's consent before applying for DBKL's approval of the plan to carry out additional works on the property; and F

(b) all the original owners had agreed to the construction.

(10) Subsequently, when CESB took over the property, CESB knew of and agreed to the construction, and was fully aware and agreed that the windows would necessarily have to be sealed off for the construction; and G

(11) DW2 also testified that when the plaintiff purchased the property from CESB, the construction was already in progress. H

**[17]** Purely on the facts, we were of the view that the learned trial judge had correctly held that, on a balance of probabilities, the plaintiff has failed to prove that the defendant had caused or consented to the construction of the new building adjacent to the property. I

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## Conclusion

**[18]** On the foregoing grounds, we answered the above question in the negative. Hence, we were unable to find any merit in this appeal, which we dismissed with costs of RM5,000 to the defendant. The decision of the High Court is affirmed. Deposit to the defendant on account of the fixed costs.

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